IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2007

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THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.R.P.NPD.NO.1822 OF 2006
AND
M.P.NO.1 OF 2006

Shree Krishna Keshav
Laboratories Ltd.,
43,Armenian Street,
(Ground Floor),
Chennai-600 001. .. Petitioner/Respondent.

Vs.

1.Pushpa S.Fomra
2.Kusum N.Forma
3.Anita S.Fomra .. Respondents/Petitioner.

This civil revision petition has been preferred under Section 25 of the Tamil Nadu Buildings (Lease & Rent Control) Act 18 of 1960 as amended by Act 23/1973 and Act 1/80 against the judgment and decree of the appellate authority, VII Judge, Court of Small Causes, Chennai, dated 02.11.2006 in RCA No.129 of 2003 confirming RCOP.No.1776/01 dated 31.1.2003 on the file of the 13the Judge, Court of Small Causes, Chennai.

For Petitioner : Mr.V.Eapen Varghese

For Respondents: Mr.B.T.Seshadri

ORDER

Challenging the judgment of the Rent Control Appellate Authority, VII Judge, Court of Small Causes, Chennai made in RCA No.129 of 2003, confirming the order of eviction made by the Rent Controller, XIII Judge, Court of Small Causes, Chennai made in RCOP No.1776 of 2001, the revision petitioner/tenant has brought forth this civil revision petition.

2.The court heard the learned counsel on either side. The respondents/landlord filed the petition under Section 10(3)(c) of the Tamil Nadu Buildings (Lease and Rent Control) Act, alleging that the building bearing Door No.43, Armenian Street, Chennai belonged to the landlord; that the respondent/tenant is occupying a portion in basement floor measuring an extent of 400 sq. ft. and a room in ground floor measuring 2300 sq. ft. paying a monthly rent of Rs.1800/-; that the respondent/tenant is having their sales office in the premises besides

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distributing pharmaceutical products; that after purchasing the property, the landlord informed the tenant to vacate the petition mentioned premises for their possession and occupation and thus, the building requires for additional accommodation, since they are having partnership business dealing with motors and other parts and the said business is now carrying on in a rented premises and it is a very small and tiny one and apart from that it would be very difficult to lift the motors and other products to the first and second floors and under these circumstances, the petitioners/landlord require the ground floor, which is in the occupation of the tenant and hence, he was to be evicted.

3.The petition was strictly resisted by the tenant, stating that there was no bona fide need at all; that it was not needed for additional accommodation; that at the time when the petition was filed, a portion of the property in the ground floor, which was in occupation of one Lakshmi Electricals, was available, since they have vacated the same and they are with the landlord; that the first and second floors were also in the occupation of the landlord; that if they are really in need to carry on business, they could carry on the business in that portion, which was kept vacant and also in the first and second floors; and that they are actually having business in the ½ H.P. and 1 H.P. motors. Added further that in the instant case, actually the property is not needed by them and they have got registered office at No.123. Govindappa Naicken Street and the petition lacks bona fide and there is no real need for additional accommodation, which was nothing but an invented one for the purpose of eviction of the tenant and under these circumstances, the petition was to be dismissed.

4.The Rent Controller, on enquiry, ordered eviction. The aggrieved tenant took it on appeal, which was dismissed. Hence, the unsuccessful tenant has brought forth this civil revision petition before this court.

5.In support of the revision petition, the learned counsel would submit that in the instant case, the petition was filed under Section 10 (3)(c) of the Act for additional accommodation; that it could be applied in a case where the portions, which were available in the hands of the landlord, were not sufficient to carry on business; that they are only dealing with ½ H.P. and 1 H.P. motors; that they have got first and second floors, which measures 1400 sq. ft.; that even in the ground floor, only 2000 sq. ft. are available in the occupation of the revision petitioner/tenant and the rest were actually in the occupation of one Lakshmi Electricals and in respect of which, eviction was sought for and the eviction has been ordered and hence, the vacant possession is in the hands of the landlord and under these circumstances, there is thoroughly lack of bona fide; that they have got their registered office in some other place, where they could run the business; that while the other portions are available, where they could well carry on business in motors, the petition has been brought forth by the landlord, which was thoroughly lack of bona fide and hence, the order of the authorities below have got to be set aside.

6.The court heard the learned counsel for the respondents/landlord, who in his sincere attempt in sustaining the orders of the courts below, has put forth his contentions, which were raised by him before the courts

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below.

7.After careful consideration of the rival submissions made and looking into the materials available, the court is of the considered opinion that the order of eviction has got to be sustained. It is not in controversy that the revision petitioner is the tenant under the landlord. The building, in question, consists of three floors, each 2400 sq. ft. It is an admitted position that the first and second floors are in the occupation of the landlord. Apart from that, so far as the ground floor was concerned, except the portion of the revision petitioner, who is running pharmaceutical business, the other portion, measuring 300 or 400 sq. ft., was in the occupation of one Lakshmi Electricals and in respect of the same, eviction was ordered. A petition was filed originally under Section 10(3)(a)(iii) of the Act for owners occupations and the petition was originally ordered by the Rent Controller and the appeal filed by the tenant was dismissed. Thereafter, the tenant has preferred civil revision petition before this court, but in the civil revision petition, this court has held that in a case like this, the petition under Section 10(3)(a)(iii) of the Act was not maintainable and if at all, he should have asked for additional accommodation, for which he could file a petition under Section 10(3)(c) of the Act and after disposal of the petition under Section 10(3)(a)(iii) of the Act, the landlord filed the instant petition under Section 10(3)(c) of the Act, stating that they are running a business in a rental premises, which is tiny in nature. They are carrying on business in motor and its parts, for which the first and second floors could not be used, since they have to lift the motors and it would be very difficult to lift the motors and hence, they require the premises in the occupation of the tenant, who is the revision petitioner herein.

8.The petition was contested by the tenant, stating that the landlords got first and second floors, where they could carry on the business and even in the ground floor, a portion was also available and it could be used to carry on business.

9.At this juncture, it is to be pointed out that even assuming that the first and second floors are available with the landlord and the landlord is in possession of the same, neither the tenant could dictate nor the landlord could be compelled to carry on business in the first and second floors. In a given case, the court has to test as to whether the petition was filed with bona fide. In the instant case, the court is satisfied that the landlord has filed the petition for additional accommodation for bona fide requirement. It is an admitted position that the respondents/landlord are carrying on business in motors. It is quite natural that if they are carrying on business in the first and second floors, it would be very difficult to lift all the motors and its accessories to the first and second floors. Apart from that, when the landlord is having his own property, where the tenant is in possession of the same and if the landlord requires the same for carrying on his own business, there cannot be any impediment in allowing the landlord to carry on business in his own property. Even if the related hardship is measured, the court is of the considered opinion that it would be more if the landlord was asked to carry on business in motor either in the rented premises or in the first and second floors. So far as the portion, which was in possession of Lakshmi Electricals is concerned, the area is only

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300 to 400 sq. ft. and under these circumstances, it would not be possible for the landlord to carry on business in that place.

10.At this juncture, the contention put forth by the learned counsel for the petitioner is that it was only a desire to carry on business and it is available in the course of the petition. Now, it has to be pointed out that it was not only a mere expression of desire of the landlord to carry on business, but has also clearly stated that two other parts are in occupation and they require only the ground floor for additional accommodation to carry on business. Thus, it would be quite clear that they have come with the petition for the requirement of additional accommodation. Under these circumstances, the authorities below were perfectly correct in ordering eviction. Accordingly, the order of eviction is sustained. This civil revision petition fails and the same is dismissed. No costs. Consequently, the connected M.P. is also dismissed.

11.Taking into consideration the fact that the petitioner is carrying on business and he has to find out suitable accommodation to shift his business and that too in a commercial area like the property in question, where he has got reputation, the court feels sufficient time has got to be given. Accordingly, nine months time is granted to the petitioner to vacate the premises and hand over the same to the respondents/landlord. The petitioner is directed to file an undertaking affidavit to that effect within a period of two weeks herefrom.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

vvk

To
1. The Registrar,
   Court of Small Causes, Chennai.
2. The Rent Controller,
   The XIII Judge, Small Causes Court, Chennai.
3. The Appellate Authority,
   The VII Judge,
   Small Causes Court,
   Chennai.
4. The Section Officer, VR Section,
   High Court, Madras.

+ 2 CCs to Mr.V.Eapan Varghese, Advocate SR NO 48607
+ 1 CC To Mr. B.T.Seshadri, Advocate SR NO.48648

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